

**DIVISION CIRCULAR #46
(N/A)**

DEPARTMENT OF HUMAN SERVICES

DIVISION OF DEVELOPMENTAL DISABILITIES

EFFECTIVE DATE: January 1, 1999

DATE ISSUED: December 14, 1998

(Rescinds Division Circular #46, "Payments to Operators of Community Care Homes Following Investigations," issued July 10, 1992.)

- I. TITLE:** Payments to Operators of Community Care Homes Following Investigations.
- II. PURPOSE:** To establish guidelines for payments to operators of Community Care Homes following investigations of abuse and neglect.
- III. SCOPE:** This circular applies to Community Services, the Office of Licensing and Inspections and operators of Community Care Homes.

IV. POLICIES:

Allegations of abuse or neglect shall be reported in accordance with Division Circular #14.

It is the responsibility of the operator of a Community Care Home to cooperate in the investigation of allegations of abuse or neglect. Failure to cooperate shall result in the loss of reimbursement.

V. **GENERAL STANDARDS:**

- A. **Definitions** - For the purposes of this circular, the following terms shall have the meaning defined herein:

"Abuse" means any act or omission that deprives an individual of his/her rights or which has the potential to cause or causes actual physical injury or emotional harm or distress. Examples of abuse include but are not limited to: acts that cause pain, cuts, bruises, loss of body function, sexual abuse, temporary or permanent disfigurement, death; striking with a closed or open hand; pulling hair; withholding food; forcing a client to eat obnoxious substance, use of verbal or other communication to curse, vilify, degrade an individual or threaten with physical injury. Planned use of behavioral intervention techniques which are part of an approved behavior modification plan or IHP shall not be considered to be abuse or neglect.

"Community Care Home" means private home or apartment in which an adult person or family contracts to provide individuals with developmental disabilities with care and/or training which is licensed under N.J.A.C. 10:44B. These homes include Family Care Homes, Skill Development Homes and Family Based Respite Homes.

"Office of Licensing and Inspections" means that component of the Division that licenses community residences for the developmentally disabled.

"Operator" means the person licensed to operate a Community Care Home.

"Neglect" means the failure of a paid or unpaid caregiver to provide for the care and safety of an individual under his or her supervision, including but not limited to sufficient food, clothing, health care, shelter and/or supervision.

- B. Once a person is removed from the Community Care Home, the Division is not obligated to return him or her if an allegation is unfounded.
- C. A person may be returned to the home if an allegation is unfounded, depending upon a case by case review of the person's current living arrangements, adjustment, needs and wishes.

- D. Payment to the operator shall cease when the person(s) is removed from the home.
- E. Reimbursement may be made only for room and board for persons who had been receiving services from the Division if an allegation is unfounded. No payment shall be made for training.

VI. PROCEDURES:

- A. Payments to the operator shall cease as of the day the person(s) is removed. No reimbursement may be requested while the matter is pending criminal investigation or the license is suspended or revoked.
- B. The operator may request retroactive reimbursement when:
 - 1. The operator is exonerated of the charge by the Division's investigation and/or any pending criminal charges are dropped, or
 - 2. The revocation or suspension is rescinded upon appeal.
- C. Requests for reimbursement shall be made in writing to the Regional Administrator.
- D. The amount of the reimbursement shall be negotiated between the operator and Community Services. In the case of a suspension or revocation, the reimbursement shall be limited to the period of the suspension or revocation.
- E. Once a license has been reinstated, the operator shall be able to receive payment for a person placed in the Community Care Home.
- F. The Division may consider returning an individual removed from the home on an expedited basis under the conditions listed in Appendix A.

_____/s/_____
Douglas B. McGruther,
Acting Director

APPENDIX A

Division Circular #46

PURPOSE: To provide a mechanism for review of a decision to restore a license and/or return individuals to the home on an expedited basis prior to the completion of a full investigation.

CRITERIA: A review by the parties listed below shall be made when the following conditions have been met:

1. An initial investigation by the Special Response Unit (SRU) or the regional staff indicates that there is no basis for the allegations of abuse or neglect. The procedures in this appendix may not be used if the allegations involve exploitation;
2. There is no evidence of imminent danger (see definition in Division Circular #15) should the individual(s) return;
3. There are no existing conditions in the Community Care Home noted by any party to the review which pose a threat to the health, safety or welfare of the individual; and
4. The individual(s) have been out of the Community Care Home for 30 days or less.

PROCEDURE: The party conducting the investigation (either the SRU or the regional staff) shall contact the Division Administrative Practice Officer (APO).

1. The Division APO shall schedule a meeting to review the findings of the investigating party. The Division APO shall contact:
 - The Regional Administrator to send a representative;
 - The Administrator, SRU; and
 - The Chief, Office of Licensing and Inspection.
2. Prior to the meeting, the Regional Administrator shall be responsible to:
 - a. determine if the individual wishes to return to the home; and

- b. contact the guardian (including BGS) to determine whether the individual may be returned to the CCH.
3. The meeting shall be held within 10 working days of receipt of the notice by the Division APO:
4. The meeting may be in person, by conference call or a combination;
5. At the meeting, the parties shall:
 - a. do a risk assessment concerning return of the individual(s); which shall include but not be limited to a determination that:
 - the incident did not occur as reported;
 - the person will be safe if returned;
 - the incident reported appropriately by the licensee;
 - medical attention, if needed, was promptly provided;
 - no previous history of significant UIRs are documented; and
 - there is no history of less than full licenses.
 - b. establish any conditions which must be met by the licensee prior to or immediately following the return of the individual.
6. The individual(s) may be returned if all parties agree to that plan. If there is not a unanimous opinion, the individual may not be returned. The guardian must agree to the return.
7. The APO shall confirm the results in writing to the Chief, OLI, Regional Administrator and Administrator, SRU within 10 working days of the determination.